

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 23.16.101, 23.16.122,)	PROPOSED AMENDMENT AND
23.16.202, 23.16.1703, 23.16.1705,)	REPEAL
23.16.1823, and 23.16.2602 and the)	
repeal of ARM 23.16.1803,)	
23.16.1805, and 23.16.1807)	
pertaining to loans to licensees from)	
institutional and noninstitutional)	
sources, use of checks and debit)	
cards for certain gambling activities,)	
prohibition on use of credit cards for)	
gambling, sports pool wagers, and)	
applications, fees and issuance of)	
video gambling machine permits)	

TO: All Concerned Persons

1. On September 7, 2017, at 1:30 p.m., the Department of Justice will hold a public hearing in the conference room of the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice, no later than 5:00 p.m. on September 1, 2017, to advise us of the nature of the accommodation that you need. Please contact Jean Saye, Department of Justice, 2550 Prospect Avenue, P.O. Box 201424, Helena, Montana, 59620-1424; telephone (406) 444-1971; fax (406) 444-9157; or e-mail jsaye@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

23.16.101 DEFINITIONS (1) through (8)(a) remain the same.

(b) is identified as a regulated lender in 31-1-111, MCA, which, in addition to lenders identified in ~~(7)(a)~~(8)(a), includes bank holding companies, consumer loan licensees owned by bank holding companies, mutual or stock insurance companies, and federal and state agencies authorized to lend money.

(9) through (13) remain the same.

(14) "Noninstitutional lender" or "noninstitutional source" means:

(a) a person other than an institutional lender as defined in ~~(7)~~(8) of this rule;

or

(b) remains the same.

(15) "Owner" or "owner of an interest" means a person with a right to share in the profits, losses, or liabilities of a gambling operation. The term "ownership interest" is synonymous with "owner" or "owner of an interest." The term "owner" or "owner of an interest" does not include route operators with a right to share in proceeds from video gambling machines they have leased to location operators. "Owner" or "owner of an interest" includes:

(a) ~~loan~~ guarantors on a loan to a gambling licensee from a noninstitutional source who make actual debt payments for or contribute capital to on behalf of a gambling operation licensee:

(i) that are disclosed as capital contributions; or

(ii) that the department determines are not actual loans to the gambling licensee under ARM 23.16.122;

(b) coborrowers, guarantors, and pledgors of collateral on a loan to a gambling licensee from a regulated lender:

(i) who fail to meet the suitability requirements of 23-5-176, MCA; or

(ii) who fail to timely make complete disclosures of payments as required by 23-5-118, MCA;

(b) and (c) remain the same but are renumbered (c) and (d).

(16) through (21) remain the same.

AUTH: 23-5-115, 23-5-621, MCA

IMP: 23-5-112, 23-5-115, 23-5-118, 23-5-176, 23-5-629, 23-5-637, MCA

REASON: The division must amend this rule to conform to the 2017 Legislature's amendments to 23-5-118, MCA. Senate Bill 344 created an exception to the statute prohibiting transfers of an ownership interest in a gambling license prior to approval of the department. Under the former rule, in some circumstances, the division viewed payments by coborrowers, guarantors, or pledgors as evidence of a transfer of an ownership interest in a gambling license. The new legislation, SB 344, 2017 Laws of Montana Ch. 301, prohibits the department from viewing regulated lenders' commercial banking practices as possible transfers of an ownership interest as long as the coborrower, guarantor, and/or pledgor meet the division's standard suitability requirements found in 23-5-176, MCA, and the licensee complies with certain disclosures. Consequently, this rule must be amended to harmonize with the statute and provide direction on when the suitability investigation must occur and a method for making disclosures required by statute. Additionally, the division proposes to amend this rule to correct internal cross-references.

23.16.122 LOAN EVALUATION—INSTITUTIONAL LENDER SECURITY INTERESTS - GUARANTOR PAYMENTS (1) remains the same.

~~(2) Institutional lenders may secure loans made to a license applicant or licensee with security interests on assets belonging to the applicant or licensee. In securing the assets of a license applicant or licensee, an institutional lender may limit the movement of the assets, including a liquor license.~~

~~(3)~~(2) For loans made to a license applicant or licensee, an institutional a noninstitutional lender may require loan guarantees and may secure guarantee

agreements with assets of the guarantor. The license applicant or licensee must ensure the following requirements are met:

(a) guarantors must meet the requirements of 23-5-176, MCA, prior to closing the noninstitutional loan;

(b) a loan guarantor on a noninstitutional loan must within 90 days of the payment elect to treat payments made under a loan guarantee agreement as loans, paid in capital, or other equity contributions.

(i) If the guarantor elects to treat the payments as loans to the licensee, the licensee must follow requirements for disclosing noninstitutional lenders found in ARM 23.16.120(7).

(ii) If the guarantor elects to treat payments as an equity contribution, and such election changes the percentage of ownership in the license, an amended license application must be filed with the department at the time of the election to disclose the change.

~~(4) An institutional lender may require payment from loan guarantors without initially exhausting all remedies against the borrower under the following conditions:~~

~~(a) if the guarantor is an owner of the applicant/licensee, i.e., partner, shareholder, member, and payment is made with the owner/guarantor's own funds or funds borrowed from an institutional or division approved noninstitutional source;~~

~~(b) if the guarantor is not an owner, payment may only be made as a loan to the owners or licensed borrower/entity. Funds used to loan the money for the payment under the guarantee, must be the guarantor's own funds or funds borrowed from an institutional source. The guarantor must also be found suitable as a source of credit as part of the application or loan approval process by submitting a personal history statement (Form 10) and a complete set of fingerprints (Form FD-258).~~

(3) A gambling license applicant with a loan from a regulated lender, that was acquired prior to receiving a gambling license, must disclose that loan, including all coborrowers, guarantors, or pledgors, to the department in the application. Following that disclosure, the department must complete a suitability investigation under the requirements of 23-5-176, MCA, of all coborrowers, guarantors, or pledgors who are not an owner of the license. No coborrower, guarantor, or pledgor may make a payment on a gambling licensee's loan until the department has determined the payor meets the requirements of 23-5-176, MCA.

(4) A gambling licensee that acquires a loan from a regulated lender must disclose that loan, including all coborrowers, guarantors, or pledgors, no later than the first license renewal following the licensee's receipt of funds under the loan. Following that disclosure, the department must complete a suitability investigation under the requirements of 23-5-176, MCA, of all coborrowers, guarantors, or pledgors who are not an owner of the licensed entity. No coborrower, guarantor, or pledgor may make a payment on the licensee's loan until the department has determined the payor meets the requirements of 23-5-176, MCA.

(5) A licensee with a loan from a regulated lender must, within 90 days of a coborrower's, guarantor's, or pledgor's payment on the loan, submit to the department on Form 45 all mandatory disclosures and related documentation.

~~(5) A loan guarantor must annually elect to treat payments made under a loan guarantee agreement as loans, paid in capital, or other equity contributions, as required by the Internal Revenue Code.~~

~~(a) If the guarantor elects to treat the payments as loans to the licensee, the licensee must follow requirements for disclosing noninstitutional lenders found in ARM 23.16.120(7).~~

~~(b) If the guarantor elects to treat payments as an equity contribution, and such election changes the percentage of ownership in the license, an amended license application must be filed with the department at the time of the election to disclose the change.~~

(6) A licensee participating as a coborrower, guarantor, or pledgor, in a nonlicensee's loan from a regulated lender, must disclose to the department that loan and all parties to the loan no later than the first license renewal following closing of the loan. Following that disclosure, each party to the loan must undergo a suitability investigation by the department under 23-5-176, MCA. The licensee may not make a payment on the borrower's loan until the department has determined all parties meet the requirements of 23-5-176, MCA.

(7) A licensee participating as a coborrower, guarantor, or pledgor, in a nonlicensee's loan from a regulated lender must, within 90 days of a making a payment on the borrower's loan, submit to the department on Form 45 all mandatory disclosures and related documentation.

AUTH: 23-5-115, MCA

IMP: 16-4-801, 23-5-110, 23-5-115, 23-5-118, 23-5-176, MCA

REASON: The division must amend this rule to conform to the 2017 Legislature's amendments to 23-5-118, MCA, contained in SB 344, 2017 Laws of Montana Ch. 301. That new law created a separate regulatory regimen for loans from "a regulated lender, as defined in 31-1-111, MCA." Those provisions on loans from "regulated lenders" overrule the department's rules on "institutional lenders." In addition to statutorily approving loans to gambling licensees whose collateral structure and documentation are consistent with commercial lending practices, SB 344 also allowed a gambling licensee to participate in a nongambling licensee's loan as a coborrower, guarantor, or pledgor. Formerly, one who shared in the profits, losses, or liabilities of a gambling licensee was, by rule, deemed an owner of an interest in that licensee. Under the new statute, gambling licensees may participate in a nonlicensee's loan which may not be viewed as an ownership interest. However, the division still has a statutory duty under 23-5-110, MCA, to ensure that gambling licensees are not controlled by or influenced by corrupt persons. That duty requires the division to evaluate loans to third parties involving a gambling licensee because it is foreseeable that one unsuitable to hold a gambling license in his or her own name could enjoy the profits of a gambling establishment by binding the licensee to the unsuitable party's institutional loan. The proposed rule conforms the division's treatment of institutional loans to the legislative changes while preserving the division's duty to maintain a gambling climate free of corrupting influences.

23.16.202 CREDIT PLAY PROHIBITED (1) Except as provided in (2), all gambling or gambling activity must be played on a cash basis. All playing of games of chance must be on a cash basis. No credit may be extended to any player.

Consideration to play a game of chance must be paid in full, in cash, in advance of any play.

(2) Players may tender, and sponsors or licensees may accept, payment by cash, check, electronic check (e-check), or debit card for entry in Calcutta pools as provided in 23-5-222, MCA, raffles as provided in 23-5-413, MCA, casino nights as provided in 23-5-702, MCA, and card games normally scored using points as provided in Title 23, chapter 5, part 3, MCA.

(2) remains the same but is renumbered (3).

(2)(a) remains the same but is renumbered (4).

(3) remains the same but is renumbered (5).

(4)(6) No licensee may accept credit cards for cash advances or the sale of items that may be redeemed for cash, such as gambling chips, money orders, checks, electronic checks (e-checks), vouchers, travelers' checks, wire transfers, or gift cards. The sum of a credit card transaction may not exceed the actual price charged for food, beverages, items offered for sale, tax where applicable, any service tip offered to and retained by the licensee's staff plus any credit card transaction fee charged the customer.

(5) and (6) remain the same, but are renumbered (7) and (8).

AUTH: 23-5-115, MCA

IMP: 23-5-115, 23-5-157, MCA

REASON: The division must amend this rule to conform to the 2017 Legislature's amendments to 23-5-157, MCA, which created an exception to the general prohibition on credit gambling. That legislation, SB 302, 2017 Laws of Montana Ch. 403, specifically allows players to enter Calcutta pools, raffle, casino nights, and limited card games by payments through cash, check, e-check, or debit card. The amended rule harmonizes with the new statutory exception.

23.16.1703 SALE OF SPORTS POOL CHANCES (1) The total cost of a chance shall not exceed ~~\$25~~ \$100 per sports event, or ~~\$25~~ \$100 per sports event for a series sports pool as described in ARM 23.16.1705(3)(b), and must be paid in full and in cash at the time the chance is selected.

(2) through (5) remain the same.

AUTH: 23-5-115, 23-5-512, MCA

IMP: 23-5-502, 23-5-503, 23-5-512, MCA

REASON: The division must amend this rule to conform to the 2017 Legislature's amendments to 23-5-503, MCA, which increased the maximum wager to purchase a chance to participate in a sports pool from \$25 to \$100 in any combination. That legislation, HB 564, 2017 Laws of Montana Ch. 273, created a \$100 wager cap, necessitating a change to the portion of this rule which applied the former cap.

23.16.1705 AUTHORIZED SPORTS POOLS (1) through (3)(d)(ii) remain the same.

(iii) The pool must be designed so that the total of each participant's wager(s) does not exceed ~~\$25~~ \$100, the total value of all prizes equals the total of all wagers, and the total value of all prizes awarded does not exceed \$2,500.

(iv) through (g) remain the same.

AUTH: 23-5-115, 23-5-512, MCA

IMP: 23-5-502, 23-5-503, 23-5-512, MCA

REASON: See rationale for amendments to ARM 23.16.1703.

23.16.1823 PRORATION OF PERMIT FEE – RENEWAL VIDEO GAMBLING PERMITS – ELIGIBILITY, APPLICATION, RENEWAL, PRORATION (1) A gambling operator is eligible to apply for video gambling machine permits only if the operator holds an appropriate alcoholic beverage license and:

(a) the restrictions of 23-5-629, MCA, do not apply; or

(b) the restrictions of 23-5-629, MCA, apply, and

(i) the department receives a written application from both common owners that provides revocable consent for a single common owner to apply for video gambling machine permits exclusive of the other; or

(ii) the operators are common owners, as defined in 23-5-629, MCA, but do not, in fact, operate in an interrelated manner as defined in (2) of this rule.

(2) Operators subject to the restrictions of 23-5-629, MCA, operate in an interrelated manner when they are common owners, as defined in 23-5-629, MCA, and the common owners operate the licensed businesses for their mutual or individual advantage, gain, or convenience. Operators meeting one or more of the definitions of "common owner" in 23-5-629, MCA, are presumed to operate in an interrelated manner and are presumed ineligible for video gambling permits. The presumption that operators subject to the restrictions of 23-5-629, MCA, are operating in an interrelated manner may be rebutted by the operators' submission to the department of evidence that they do not, in fact, operate in an interrelated manner. An operator applying for permits under this rule must:

(a) submit such evidence prior to applying for a video gambling machine permit;

(b) prove by a preponderance of the evidence that they do not operate in an interrelated manner; and

(c) submit any challenges to the department's intended action on such applications as outlined in ARM 23.16.203.

(3) An eligible gambling operator or machine owner must submit a completed video gambling machine permit application (Form 8) for each machine to be permitted. An application is not complete unless:

(a) it contains all information and statements required by Form 8; and

(b) it includes the permit fee required by 23-5-612, MCA.

(4) A permit fee is not refundable after the department issues the permit except:

(a) the department must refund a permit fee if the permit application is withdrawn before issuance or if the department denies the permit; or

(b) when the applicant demonstrates the permit application was the result of an inadvertent input error and the erroneously permitted machine was not placed in service.

(1) remains the same but is renumbered (5).

(6) Video gambling machine permit renewals and fees must be submitted to the department prior to June 30 of the current license year.

~~(2) When applying for a video gambling machine permit, a licensed gambling operator shall indicate on the permit application the calendar quarters that he intends to operate the machine.~~

~~(3) An application for renewing a permit must be submitted to the Gambling Control Division of the department upon forms prescribed by the department, the permit fee paid, and a new gambling operator license issued which lists the machine for which the permit is issued before a previously permitted machine may be operated after midnight on June 30.~~

~~(4) Video gambling machine permits may not be issued to a licensee whose premises are subject to the common ownership restriction contained in 23-5-629, MCA, unless the department receives written application from the common owners that provides written consent and authorization to permit the video gambling machines at one of the identified locations under common ownership.~~

~~(5) Licensees whose premises are subject to the common ownership restriction contained in 23-5-629, MCA, but who are authorized to receive permits until September 30, 2005, may upon application receive temporary video gambling machine permits that will expire on September 30, 2005. Upon or prior to expiration of the temporary permits, the licensee shall file a letter of withdrawal and quarterly report for each video gambling machine as required by law. The department shall only charge a final quarter fee (e.g., April 1 through June 30) for such temporary permits.~~

~~(6)~~(7) The department may consider the same criteria for renewal of permits as for the original issuance of a permit. Failure to satisfy the permit criteria contained in the act and these rules may result in denial of renewal of the permit.

(8) Upon approval of a permit application, the department will issue a new gambling operator license listing all renewed or newly permitted machines. A gambling operator may not place a machine in service before receiving the updated gambling operator license.

AUTH: 23-5-115, 23-5-621, MCA

IMP: 23-5-602, 23-5-611, 23-5-612, 23-5-621, 23-5-629, MCA

REASON: This rule amendment is necessary following passage of SB 25, 2017 Laws of Montana Ch. 276, which amended 23-5-629, MCA, the gambling establishment "stacking law." The stacking law was enacted to prevent gambling operators from coordinating to circumvent the 20-video gambling machine per location limit. 23-5-611(3), MCA. Formerly, the stacking law disallowed video gambling machine permits to all licensed operators whose premises were located within 150 feet of each other and who were "common owners" as defined in statute. Following its amendment, the stacking law only applies to licensees if they are "common owners" and, in fact, operate in an "interrelated manner." The statutory

amendment specifically directed the department to promulgate a rule that defines the new term – operating in an "interrelated manner."

The department proposes to amend this rule in other respects to improve its clarity and readability. Additionally, the department proposes to amend this rule to combine other somewhat repetitive video gambling permitting rules into a single all-encompassing rule. ARM 23.16.1803, 23.16.1805, and 23.16.1807 pertain to video gambling machine permitting and contain overlapping concepts. For ease of reference, the department proposes to repeal ARM 23.16.1803, 23.16.1805, and 23.16.1807 and incorporate necessary provisions into ARM 23.16.1823. With the amendments, just one rule will define who is eligible for permits, how to apply for permits, the schedule for prorating permit fees, and the method to renew permits.

23.16.2602 RAFFLE GENERAL REQUIREMENTS, AUTHORIZED
RANDOM SELECTION PROCESSES, AND RECORD KEEPING REQUIREMENTS

(1) A raffle sponsor must make all raffle terms available to the public prior to the sale of any raffle tickets. In all cases a raffle sponsor must establish and make available the date of the raffle drawing. Other raffle terms may include:

- (a) the name and contact information of the raffle sponsor;
- (b) persons eligible or ineligible to purchase tickets;
- (c) locations where sales are known to be prohibited;
- (d) cost of raffle tickets;
- (e) a complete description of the prize(s) and its value;
- (f) an estimated number of tickets to be sold which may be unlimited;
- (g) the date ticket sales close; and
- (h) the method of drawing winning ticket(s).

(1) and (2) remain the same but are renumbered (2) and (3).

(4) Prior to conducting a raffle on the internet, a nonprofit organization must first complete a one-time registration form (Form 46) supplied by the department.

(5) A raffle sponsor's challenge to the department's intended action to refuse registration as a nonprofit must proceed under ARM 23.16.203.

(3) remains the same but is renumbered (6).

~~(4) All raffle terms, including the date of the raffle drawing, must be available to the public prior to the sale of any raffle tickets.~~

(7) For any violation of this rule, the department may pursue remedies available under 23-5-136, MCA.

AUTH: 23-5-115, 23-5-413, MCA

IMP: 23-5-112, 23-5-413, MCA

REASON: This rule is necessary following passage of SB 25, 2017 Laws of Montana Ch. 276, which created an exemption from the general prohibition against internet gambling. That law excludes "registered" nonprofit organizations' raffles from the definition of internet gambling and expressly permits nonprofit organizations to sell raffle tickets over the internet. Formerly, internet gambling was unlawful as an illegal gambling enterprise. With this statutory change, however, registered nonprofit organizations may now sell raffle tickets over the internet. A rule amendment is necessary to create a registration process and an administrative procedure should

the department find an organization ineligible for the nonprofit organization exemption.

Montana law previously required raffle announcements and advertisements posted on the internet to include "all raffle terms." 23-5-413, MCA. The regulation mirrored that statutory requirement, but did not define minimum "raffle terms." With nonprofit organizations' entry into a greatly expanded market through internet raffle sales, the public interest is served by advising participants of the rules and management of the raffle.

Internet raffles are restricted to registered nonprofit organizations. Any other organization offering an internet raffle in Montana may be sanctioned. This rule is necessary to advise raffle promoters of the possibility of sanction for such a violation.

4. The department proposes to repeal the following rules:

23.16.1803 APPLICATION FOR PERMIT, FEE, AND PERMIT REQUIREMENTS

AUTH: 23-5-115, 23-5-621, MCA

IMP: 23-5-602, 23-5-611, 23-5-612, 23-5-621, 23-5-637, MCA

23.16.1805 REFUND OF PERMIT FEE

AUTH: 23-5-115, MCA

IMP: 23-5-612, MCA

23.16.1807 ISSUANCE OF VIDEO GAMBLING MACHINE PERMIT

AUTH: 23-5-115, 23-5-605, 23-5-621, MCA

IMP: 23-5-603, 23-5-605, 23-5-611, 23-5-612, 23-5-621, 23-5-637, MCA

REASON: The division proposes to repeal these rules to consolidate video gambling machine permit regulations into a single, compact, and understandable rule – ARM 23.16.1823. Each of these rules touches an aspect of video gambling machine permitting. Passage of SB 25, 2017 Laws of Montana Ch. 276, which amended 23-5-629, MCA, the gambling establishment "stacking law," compelled the division to amend ARM 23.16.1823, also pertaining to permitting. As amended, ARM 23.16.1823 makes specific reference to mandatory use of department Form 8, specifying the requirements for a permit application. Application details and procedures set out in these several rules are now condensed into just one rule and a step-by-step form. Consequently, these rules are no longer necessary.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Michael L. Fanning, 2550 Prospect Avenue, P.O. Box 201424, Helena, Montana, 59620-1424; telephone (406) 444-1971; fax (406) 444-9157 or e-mail j.saye@mt.gov and must be received no later than 5:00 p.m., September 15, 2017.

6. Michael L. Fanning, Department of Justice, has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 5 above or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted by United States Post and e-mail on July 10, 2017.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Matthew Cochenour
Matthew Cochenour
Rule Reviewer

/s/ Timothy C. Fox
Timothy C. Fox
Attorney General
Department of Justice

Certified to the Secretary of State August 7, 2017.